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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/995,110

11/27/2001

James Fletcher

FLTCHR2

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08/24/2004

LARRY J. GUFFEY

WORLD TRADE CENER - SUITE 1800

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BALTIMORE, MD 21202

EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,110

Applicant(s)

FLETCHER, JAMES

Examiner

Robert Madsen

Art Unit

1761

[Handwritten signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The Amendment filed June 9, 2004 has been entered claims 1-13 remain pending in the application.
2. In light of the Amendment, the two separate rejections of claims 1-13 under 35 U.S.C. 112, first paragraph have been withdrawn.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Juarez, et al. (ES 2019193). See the Office Action mailed December 11, 2003.
5. Claims 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Juarez, et al. (ES 2019193). See the Office Action mailed December 11, 2003.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claim 1, 2, 5-8, 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yueh (US 3863017) in view of Joaquin (US 3532512) and Sugino et al. (US 4362752). See the Office Action mailed December 11, 2003.
8. Claim 3, 4, 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yueh (US 3863017) in view of Joaquin (US 3532512) and Sugino et al. (US 4362752)

as applied to claims 1,2,5-8,11-13 above further in view of Ikeuchi et al. (US 4692341).

See the Office Action mailed December 11,2003.

Response to Arguments

9. Applicant's arguments filed June 9,2004 with respect to the rejection of claim 13 under 35 U.S.C. 102(b) as being anticipated by Juarez, et al. (ES 2019193) have been fully considered and are considered persuasive since Juarez et al. do not teach breaking the mollusks along their natural lines of separation. The rejection is withdrawn.

10. Applicant's arguments filed June 9,2004 with respect to the rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Juarez, et al. (ES 2019193) have been fully considered but they are not persuasive.

11. Applicant asserts that Juarez does not anticipate claim 1 because Juarez does not teach every element. However, Juarez teaches providing a supply of mollusk meat, exerting forces on the surface of the meat, cooking the meat with added flavors and colors into products, and forming pieces *similar* to spider crab meat or txangurro. If it is similar to spider crab meat it must be comparable flavor, appearance, and volume size. Spider crabs are crustaceans. It is also notoriously well known that crabs eat a diet that includes mollusks. Applicant is provided with a document on Spider Crabs, evidenced that it is notoriously well known that the adult crabs consume mollusks (See Page 6, last paragraph of The European Spider Crab Biology and Fishery) and that txangurro is spider crab meat (See Page2, paragraph 4 of World Table).

12. Applicant further asserts that Juarez does not teach *any crustacean meat*, but is directed to a specific crustacean meat. As cited in the MPEP 2131.02: "A generic claim cannot be allowed to an applicant if the prior art discloses a species falling within the claimed genus." The species in that case will anticipate the genus. *In re Slayter*, 276 F.2d 408, 411, 125 USPQ 345, 347 (CCPA 1960); *In re Gosteli*, 872 F.2d 1008, 10 USPQ2d 1614 (Fed. Cir. 1989).

13. Applicant also argues that the forces are exerted *only* on the surface of the meat. In claim 1, this is not recited in the rejected claim(s). In fact, claim 1 recites "exerting forces on the surfaces", and the extruding method taught by Juarez does that. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

14. Applicant's arguments filed June 9, 2004 with respect to the rejection of claims 7-10 under 35 U.S.C. 102(b) as being anticipated by Juarez, et al. (ES 2019193) have been fully considered but they are not persuasive. The amendment to claim 7 does not overcome Juarez. Claims 7-10 are product-by-process claims, Juarez teaches a supply of mollusk meat, that have been broken (by mincing or extrusion), cooked, have been combined with flavors and colors and formed into pieces *similar* to spider crab meat or txangurro. If it is similar to spider crab meat it must be comparable flavor, appearance, and volume size. Spider crabs are crustaceans. As discussed previously in paragraph 11, it is also notoriously well known that crabs eat a diet that includes mollusks. Since it is maintained that Juarez teaches the claimed product, the burden is shifted to the

applicant to show how the recited steps(e.g. how meat of the mollusk was removed or whether the mollusk has been soaked) affects the final cooked seafood product.

15. Applicant's arguments filed with respect to the rejections of claims 1,2,5-8,11-13 under 35 U.S.C. 103(a) as being unpatentable over Yueh (US 3863017) in view of Joaquin (US 3532512) and Sugino et al. (US 4362752) and claim 3,4,9,10 under 35 U.S.C. 103(a) as being unpatentable over Yueh (US 3863017) in view of Joaquin (US 3532512) and Sugino et al. (US 4362752), further in view of Ikeuchi et al. (US 4692341) have been fully considered but they are not persuasive.

16. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

17. Yueh is the primary reference. In the previous office action applicant's attention was directed to column 1, lines 20-67 of Yueh. Yueh teaches the general method of supplying fish fibers, which Yeuh teaches should be *fresh* and comprise fibers or small clumps of fibers (which are obtained by exerting forces) and cooking the fibers to form more lobster (Column 1, lines 45 -54). Thus, Yeuh only differs from the independent claims 1 and 13 in the use of a specific mollusk that is consumed by a lobster, or specifically a fresh scallop meat is fresh and not soaked in water and differs from claim 13 in

18. Joaquin teaches forming a more expensive seafood product using less expensive fresh (i.e. raw)scallops (column 1, lines 12-15, Column 2, line 35-37) , wherein the meat is obtained by exerting forces to break the meat along the natural break line (Column 2, lines 45-51). Applicant argues that the raw scallops taught by Joaquin, "if harvested in the stand manner " are "water-soaked, frozen for some time, but uncooked". However the claim recites "water solutions", not "water-soaked, frozen for some time". In applicant's specification, support for water solutions is described by "soaking in water to add salable weight" and "[I]ngredients such as tripolyphosphate, salt, baking soda, polyphosphates, and citric acid preservatives are also added to these mixtures to help scallops retain water". Also applicant's specification denotes dry scallops as "unprocessed". It is noted that Joaquin specifically states "natural seafood animal matter in its raw state" (Column 2, lines 19-21). This would strongly imply without preservatives and unprocessed, which is apparently involved in soaking in water solutions. Thus Joaquin meets the limitation.

19. The motivation to combine the references is : Yueh teaches forming simulated lobster from other seafood , Joaquin recognize teaches scallops are an inexpensive option to simulate more expensive seafood, and lobster is more expensive than scallops. Thus, Joaquin provides an inexpensive option for Yeuh to simulate expensive lobster. Furthermore, Sugino teaches the conventionality of simulating lobster with mollusks. With respect to Ikeuchi et al. , Ikeuchi et al. provides evidence that a method of forming lobster products can also be applied to crab products.

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

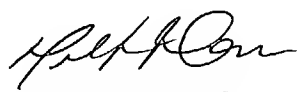
21. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761


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